

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

MARK E. JERNSTAD,

Plaintiff,

OLD REPUBLIC INSURANCE
COMPANY; LIBERTY MUTUAL
INSURANCE COMPANY; ANDERSEN
CORPORATION,

Involuntary Plaintiffs,

vs.

HOME DEPOT U.S.A., INC. and THE
HOME DEPOT, INC.,

Defendant.

Case No.: 2:21-cv-896

**DEFENDANTS' NOTICE
OF REMOVAL**

Defendants Home Depot U.S.A., Inc. and The Home Depot, Inc. (referred to herein collectively as "Home Depot"), pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, by this Notice hereby removes this action from the District Court of Walworth County, Wisconsin to the United States District Court for the Eastern District of Wisconsin. As explained below, this Court has jurisdiction under 28 U.S.C. § 1332 and 1441 et. seq. Complete diversity of citizenship exists between Plaintiff and Home Depot and it is evident from the Complaint, and upon information and belief, that the amount in controversy exceeds \$75,000, exclusive of interest and costs.

I. The State Court Action

Plaintiff Mark E. Jernstad commenced a civil action captioned *Mark E. Jernstad et al. v. Home Depot U.S.A., Inc. and The Home Depot, Inc.*, in the Circuit Court of Walworth County, Wisconsin, Case No. 2021CV00298, by serving a Complaint dated June 21, 2021 on Home Depot's registered agent on July 1, 2021 (the "State Court Action"). A copy of the following process, pleadings, and orders attached hereto as Exhibit A constitute all served or filed to date in the State Court Action: Electronic Filing Notice to Old Republic Insurance Company; Electronic Filing Notice to Liberty Mutual Insurance Company; Electronic Filing Notice to Anderson Corporation; Electronic Filing Notice to Home Depot U.S.A., Inc.; Electronic Filing Notice to The Home Depot, Inc.; Plaintiff's Civil Summons and Complaint; Electronic Filing Notice of Appearance of Attorney Michael John Nemo for Involuntary Plaintiff Anderson Corporation; Notice of Appearance of Attorney Michael John Nemo for Involuntary Plaintiff Anderson Corporation; Electronic Filing Notice of Appearance of Attorney Sarah Thomas Pagels for Defendants Home Depot U.S.A., Inc. and The Home Depot, Inc.; and Notice of Appearance of Attorney Sarah Thomas Pagels for Defendants Home Depot U.S.A., Inc. and The Home Depot, Inc. There are no pending motions that would require action by this Court after removal. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice is also being served upon counsel for Plaintiff, and a copy is being filed with the Circuit Court of Walworth County.

In the State Court Action, as set forth in the Complaint, Plaintiff claims he sustained personal injuries on or about July 26, 2018, when he fell at a Home Depot retail

store located in Lake Geneva, Wisconsin. (Plaintiff's Complaint, ¶ 10). Plaintiff claims that Home Depot was negligent and seeks compensation for his injuries and damages.

II. REMOVAL IN THIS CASE IS PROPER

This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332 for the reasons set forth below:

a. Complete diversity exists: The following statements were true on both the date that Plaintiff served his Complaint (July 1, 2021) and the date that Home Depot filed its notice of removal (July 30, 2021):

1. Plaintiff Mark E. Jernstad is a citizen of the State of Illinois (Plaintiff's Complaint, ¶ 1).
2. Involuntary Plaintiff Old Republic Insurance Company is a citizen of the State of Pennsylvania (Plaintiff's Complaint, ¶ 2).
3. Involuntary Plaintiff Liberty Mutual Insurance Company is a citizen of the State of Massachusetts (Plaintiff's Complaint, ¶ 4).
4. Involuntary Plaintiff Anderson Corporation is a citizen of the State of Minnesota (Plaintiff's Complaint, ¶ 6).
5. Defendants Home Depot are incorporated in the State of Delaware, with their principal place of business is in the State of Georgia. (See Plaintiff's Complaint ¶¶ 8, 9) ("[Home Depot] is a foreign corporation...").

b. The amount in controversy exceeds \$75,000.00. Based on the content of Plaintiff's Complaint, and upon information and belief, Home Depot believes in good faith that the amount in controversy exceeds \$75,000.00, exclusive of costs and interest. Specifically, Plaintiff claims that he has sustained, and/or will sustain in the future, medical expenses, lost income, emotional distress, and loss of normal bodily function. (See Plaintiff's

Complaint, ¶ 15). Home Depot has received notice of Plaintiff's past medical expenses that exceed \$190,000.00, and Plaintiff's pre-suit settlement demand was several multiples of \$75,000.00.

- c. No consent is required.** Since the only Defendants in this case are jointly filing the removal papers, (Home Depot U.S.A. Inc. and The Home Depot, Inc.), no consent is required. 28 U.S.C. § 1446(b)(2)(A).
- d. Removal is timely.** This removal is timely filed within 30 days of service of the complaint on Home Depot on July 1, 2021.
- e. Venue is proper.** Venue is proper in the Eastern District of Wisconsin because the Plaintiff filed his Complaint in the Circuit Court of Walworth County, Wisconsin. 28 U.S.C. § 1441(a); 28 U.S.C. § 130(b).

WHEREFORE, Defendants, Home Depot U.S.A., Inc. and The Home Depot, Inc., hereby remove the State Court Action to this Honorable Court.

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***ATTORNEYS FOR HOME DEPOT, INC. AND
HOME DEPOT U.S.A., INC.***

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2021, I electronically filed the foregoing with the Clerk of the U.S. District Court for the Eastern District of Wisconsin, using the ECF system which will send notification of such filing to the following:

Robert J. Domol
HUPY & ABRAHAM, S.C.
2830 Ramada Way, Suite 100
Green Bay, Wisconsin 54304

ATTORNEY FOR PLAINTIFF MARK E. JERNSTAD

I certify under penalty of perjury that the foregoing is true and correct. Executed July 29, 2021, in West Des Moines, Iowa.

